

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4898 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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CHIMKABHAI KUSHALNHAI AHIR

Versus

COMPETENT OFFICER & DEPUTY COLLECTOR

Appearance:

MR MI HAVA for Petitioner
RULE SERVED for Respondent No. 1
MR PRASHANT G DESAI for Respondent No. 2
MR SA PANDYA AGP for Respondent No. 3

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 19/04/99

ORAL JUDGEMENT

The petitioner, in this petition has challenged the legality of the order dated 20.11.93, Annexure-B to the petition passed by the Secretary, Revenue Department, respondent no. 3 herein, as well as the order dated 28.12.93 and communication dated 28.12.93, Annexures - C & D respectively. The petitioner is a joint owner of the land situated at city survey no. 121/2, final plot no. 90, admeasuring 13455 sq.mts., of village Fulwada of Surat district.

It is the case of the petitioner that he is having 1/2 share of the land and to that extent, he is the absolute owner of the land in question. It is

further the case of the petitioner that the aforesaid land was granted N.A. permission on 7.5.1980 and the petitioner has complied with the conditions attached to the N.A. permission. The said order is at Annexure-A to the petition. It appears that the suo motu powers was exercised by the respondent authority under section 34 of the Urban Land (Ceiling & Regulation) Act, 1976, (hereinafter be referred as 'the Act') and, in exercise of the said revisional powers, a show-cause notice was issued to the petitioner. The petitioner filed his reply dated 13.3.1992, however, the respondent no. 3 on 20.11.1993 took a decision to cancel the earlier order of 19th August, 1987 passed by the Competent Authority and Deputy Collector, Surat and declared the land admeasuring 929.50sq.mts. as surplus land and directed to take further steps in the matter, vide Annexure-B to the petition. It appears that in consequence of the aforesaid order, respondent no. 3 on 28.12.93 passed an order by holding that so far as the portion which had been declared as surplus by respondent no. 3, proceedings should be initiated under Section 9 of the Act, Annexure-C to the petition. Consequently, a notice dated 28.12.93 , Annexure-D to the petition, was also issued to the petitioner.

This Court, on 2.9.1994 issued Rule in the matter and continued the interim relief granted earlier. This Court also granted liberty to the respondents to move for fixation of early date of hearing. However, it appears that no attempts have been made by respondents for hearing the matter expeditiously.

Today, when the matter came up for hearing, Mr. M.I. Hawa, learned advocate appearing for the petitioner produced a copy of the Ordinance to repeal the Urban Land (Ceiling & Regulation) Act, 1976 passed by the Parliament and in pursuance thereto, a resolution passed by the Gujarat Legislative Assembly adopting the Act passed by the Parliament in the State of Gujarat. Perusing the provisions of the Act, it is clear that the said Act has been repealed, except the proceedings which are initiated under Section 11,12,13 and 14 of the Act. It is an undisputed fact that in the present case, the proceedings are initiated up to the provisions of Section 9 of the Act and no possession of the land in question has been taken over from the petitioner. Under the circumstances, the provisions of the repealed Act dated 22.3.1999 will be applicable to the facts of the case inasmuch as the proceedings initiated against the petitioner under Section 9 of the Act, are abated. Consequently, the order dated 20.11.1993 and subsequent

communications addressed to the petitioner dated 28.12.93 vide Annexure-B,C, & D have become redundant without there being any force of law. Consequently, the proceedings initiated against the petitioner vide Annexures-B,C & D have become null and void.

In the result, petition is allowed. Rule made absolute with no order as to costs.

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